

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
El Paso, TX, Employer**

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**Docket No. 11-769  
Issued: November 10, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 8, 2011 appellant filed a timely appeal of the October 4, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his occupational disease claim. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On March 31, 2010 appellant, then a 39-year-old letter carrier, filed an occupational disease claim alleging that he developed stress, depression and anxiety as a result of being demoted, discriminated against and humiliated at work. He became aware that his condition was

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

causally related to his work duties on January 4, 2010. Appellant stopped work on January 14, 2010 and returned on January 22, 2010. The employing establishment controverted the claim.

Appellant was treated by Cristina Flores, a social worker, for anxiety and stress after escalating problems at work. He reported that he filed a complaint at work and was demoted to mail delivery and bitten by a dog. Appellant was encouraged not to report the incident. Ms. Flores diagnosed depression, anxiety and occupational stress.

On April 13, 2010 OWCP asked appellant and the employing establishment to provide additional evidence. In a February 22, 2010 statement, appellant addressed being demoted from customer service supervisor to a letter carrier on short notice and without a reason. He claimed that other personnel with less seniority, no veteran preference, different sex and less experience were permitted to stay in their same job and were not demoted to the letter carrier or clerk craft. Appellant contended that his managers abused their authority and had discriminated against him in the demotion. During an Equal Employment Opportunity (EEO) settlement, management signed an agreement that he would keep his position as long as the job existed at the employing establishment; however, the agreement was broken on January 4, 2010 without any explanation.

On February 9, 2010 appellant was treated by Yesenia Arras, a social worker, for stress and anxiety he attributed to work problems. Ms. Arras diagnosed depression with occupational problems and recommended a sleep class and anger management. Also submitted were treatment notes from Dr. Craig Hentzel, an optometrist, dated March 24, 2009. Appellant submitted an April 6, 2010 report from Dr. Tait Dalton, a Board-certified psychiatrist, who treated appellant for work stress and insomnia. Dr. Dalton diagnosed depression and prescribed a sleep medication.

In a decision dated October 4, 2010, OWCP denied appellant's claim finding that the claimed emotional condition did not occur in the performance of duty.

### **LEGAL PRECEDENT**

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>2</sup>

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>3</sup> On the other hand the disability is not covered

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<sup>2</sup> *George H. Clark*, 56 ECAB 162 (2004).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.<sup>5</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>6</sup>

### ANALYSIS

Appellant alleged an emotional condition due to his managers abusing their authority by demoting and discriminating against him. The Board must review whether the alleged incidents and conditions of employment are compensable employment factors under the terms of FECA. Appellant has not attributed his emotional condition to the regular or specially assigned duties of his position as a claims examiner. Therefore, he has not alleged a compensable factor under *Cutler*.<sup>7</sup>

Appellant's allegations pertain to administrative and personnel actions primarily his demotion on January 4, 2010. In *Thomas D. McEuen*,<sup>8</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by management is not generally covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>9</sup>

Appellant was demoted from customer service supervisor, a position in which he worked for five years, to a letter carrier on short notice and allegedly without a reason. He indicated that

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<sup>4</sup> See *Lillian Cutler*, 28 ECAB 126 (1976).

<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> See *supra* note 4.

<sup>8</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>9</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

other personnel with less seniority or veteran preference and of less experience were permitted to stay in their jobs. Appellant alleged that management violated an EEO settlement agreement by removing him from his position without explanation. The granting or denial of a request for a transfer and the assignment to a different position are administrative functions that are not compensable factors of employment under FECA, absent error or abuse, as they do not involve his ability to perform his regular or specially assigned work duties but rather constitute his desire to work in a different position.<sup>10</sup> Appellant has not established a compensable factor of employment in this regard. He did not submit sufficient evidence to establish that his employer acted abusively or in error with regard to his position. Although appellant alleged that, a settlement agreement was violated, the evidence of record does not support a finding of error by EEO or other authority with jurisdiction over such matters.

Appellant generally alleged that he was harassed, retaliate against and discriminated against in his employment. He asserted that his managers treated him disparately, abused their authority and discriminated against him in the demotion. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>11</sup> However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.<sup>12</sup> The factual evidence of record fails to support appellant's allegations of harassment. Appellant provided insufficient information as to specific instances of harassment occurring at a particular time and place or the parties involved. Rather, he just made general allegations. The evidence is insufficient to show that appellant was singled out or treated disparately with regard to his claim of harassment. Consequently, appellant has not established a compensable employment factor.<sup>13</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

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<sup>10</sup> *Id.*; see also *Peter D. Butt Jr.*, 56 ECAB 117 (2004).

<sup>11</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>12</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>13</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board